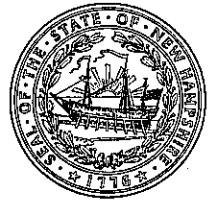




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**  
January 27, 2009

The Honorable Judith Spang, Chairman  
Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, New Hampshire 03301

**Re: HB 222, relative to fill and dredge permits in wetlands**

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 222 that would require the Department of Environmental Services (DES) to consider direct and indirect impacts of project proposals on wetlands. The DES does not support this bill.

HB 222 proposes definitions for "direct impacts" and "indirect impacts" (to wetlands), and "project proposals" within RSA 482-A, Fill and Dredge of Wetlands, which provides statutory authority for the DES wetlands permitting program. HB 222 then requires that these proposed new definitions be applied in the evaluation of the entire project proposal and its future operation when considering wetlands permit applications.

DES has a strong interest in the policy questions raised by SB 222 concerning the impacts of development on both wetlands and uplands. However, we believe that the work of the "Commission to Study Issues Relating to Land Development and Land Development Regulation in New Hampshire" (Commission) should be completed and the Commission recommendations received by the Legislature, prior to consideration of any significant changes to RSA 482-A. The Commission, which was established by enactment of HB 1579 (as Chapter 294) during the 2008 Legislative Session, is scheduled to report its findings to the Legislature by November 1, 2009. Its membership includes a diverse stakeholder group with representatives from environmental, development and municipal interests brought together with the goal to develop consensus on a clear set of environmental and development policy criteria to provide direction for New Hampshire's future growth. Commission duties include in part studying "*the effects of land development on...terrestrial and aquatic habitat*" and "*the adequacy and consistency of local, state, and federal programs as they relate to the regulation and management of land development, including regulations of wetlands buffers and setbacks, stormwater management and cumulative effects of development.*" These areas of study clearly include the direct and indirect impacts of project proposals on the wetlands considered in HB 222 and, therefore, we recommend that statutory changes not occur until the Commission's work is completed.


We also have some specific concerns with HB 222 as proposed. First, if enacted, this bill could result in standards for wetlands permit application evaluation that are too ambiguous and broad for clear, effective implementation by the DES Wetlands Bureau. HB 222 could also be interpreted to overlap with the water quality standards review

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process that applies to all wetlands permit applications under the current 401 Water Quality Certificate Program or the terrain alteration permitting program, thus making the relationships among and between these programs ambiguous. The bill does not adequately define "reasonably foreseeable" or what constitutes "post construction uses and operations." Finally, we also recommend that changes to New Hampshire's wetlands statutes not occur without very careful consideration of consistency with the federal wetlands program implemented by the U.S Army Corps of Engineers under Section 404 of the Clean Water Act and the New Hampshire Programmatic General Permit as issued to the State of New Hampshire by the Corps of Engineers.

Thank you for this opportunity to comment on this bill. Please feel free to call me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,

  
Thomas S. Burack  
Commissioner

cc: Representatives Kepner and Hubbard and Senator Janeway